

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARGARET STUDLEY,

Plaintiff,

v.

THE BOEING COMPANY,

Defendant.

No. C15-1150RSL

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT

This matter comes before the Court on “Defendant The Boeing Company’s Motion for Summary Judgment or, in the Alternative, Partial Summary Adjudication.” Dkt. # 16. Plaintiff alleges that defendant failed to accommodate her disability, discriminated against her, and retaliated against her in violation of the Washington Law Against Discrimination (“WLAD”). Boeing seeks dismissal of all of plaintiff’s claims.

Summary judgment is appropriate when, viewing the facts in the light most favorable to the nonmoving party, there is no genuine issue of material fact that would preclude the entry of judgment as a matter of law. The party seeking summary dismissal of the case “bears the initial responsibility of informing the district court of the basis for its motion” (Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986)) and “citing to particular parts of materials in the record” that show the absence of a genuine issue of material fact (Fed. R. Civ. P. 56(c)). Once the moving party has satisfied its burden, it is entitled to summary judgment if the non-moving party fails to

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

1 designate “specific facts showing that there is a genuine issue for trial.” Celotex Corp., 477 U.S.
 2 at 324. The Court will “view the evidence in the light most favorable to the nonmoving party . . .
 3 and draw all reasonable inferences in that party’s favor.” Krechman v. County of Riverside, 723
 4 F.3d 1104, 1109 (9th Cir. 2013). Although the Court must reserve for the jury genuine issues
 5 regarding credibility, the weight of the evidence, and legitimate inferences, the “mere existence
 6 of a scintilla of evidence in support of the non-moving party’s position will be insufficient” to
 7 avoid judgment. City of Pomona v. SQM N. Am. Corp., 750 F.3d 1036, 1049 (9th Cir. 2014);
 8 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986). Summary judgment should be
 9 granted where the nonmoving party fails to offer evidence from which a reasonable jury could
 10 return a verdict in its favor. FreecycleSunnyvale v. Freecycle Network, 626 F.3d 509, 514 (9th
 11 Cir. 2010).

12 Having reviewed the memoranda, declarations, and exhibits submitted by the parties,
 13 having heard the arguments of counsel, and taking the evidence in the light most favorable to
 14 plaintiff, the Court finds as follows:

15 BACKGROUND

16 Plaintiff began working at Boeing as an assembler in May 2007. In January 2012,
 17 plaintiff injured her back while on the job. She was out of work for several days and made a
 18 worker’s compensation claim. On May 3, 2012, plaintiff’s doctor released her to “return to her
 19 full work duties as of today without restriction.” Dkt. # 17-1 at 74. Plaintiff was again out of
 20 work from October 15, 2012, to November 6, 2012, on an approved medical leave of absence
 21 due to her depression. Dkt. # 23 at ¶ 3.

22 In January 2013, plaintiff received a Corrective Action Memo (“CAM”) notifying her that
 23 she had twenty-three absences between March 2012 and January 2013, ten of which had
 24 associated medical documentation and thirteen of which were marked unexcused. Dkt. # 22 at
 25 41. All but one of the unexcused absences occurred in December 2012 and January 2013.

1 Plaintiff challenged the accuracy of four of the January absences. Dkt. # 22 at 42.¹

2 In February 2013, plaintiff reported a flare up of pain in her right shoulder and was given
3 pain medications and new work restrictions. Dkt. # 24 at 5. Boeing accommodated her with a
4 light duty assignment. Plaintiff's restrictions were relaxed over time: in the beginning of March
5 2013, plaintiff was precluded from working overhead for more than three hours and lifting more
6 than 30-40 pounds. Id. Although plaintiff apparently believed that she could return to her regular
7 position with these restrictions in place, her Disability Management Representative ("DMR")
8 notified her that "[t]he restrictions you currently have on file at Boeing Medical would definitely
9 keep you from doing the full scope of your normal job, which is why you were placed in an out
10 of shop light duty." Dkt. # 23 at 8-9. The DMR declined to speak with plaintiff's doctor directly,
11 instead suggesting that the doctor speak with Boeing Medical about the appropriate level of
12 restrictions. Id. at 7-8. The next day, plaintiff's doctor cleared her to "work to the limits of her
13 job tasks as described in her Job Analysis." Dkt. # 24 at 7.² Plaintiff returned to her regular
14 position.

15 On April 18, 2013, plaintiff received another CAM based on a failure to maintain her
16 attendance at an acceptable level. Dkt. # 22 at 48. While there is evidence that plaintiff had a
17 doctor's appointment on at least two of the five days on which she was marked absent, there is
18 no indication that plaintiff provided Boeing with medical documentation linking those absences
19

20 ¹ Boeing chose not to discuss this CAM, the April 2013 attendance-related CAM, or plaintiff's
21 late 2012 mental health leave in its opening memorandum. The April 2013 CAM was specifically
22 considered when Boeing issued the multiple active corrective action ("MACA") CAM in July 2013, and
23 yet it is ignored when Boeing explains what led to the issuance of the MACA CAM. Dkt. # 16 at 11.
24 The Court appreciates the fact that these intervening CAMs and protected activity make it more difficult
25 to argue that plaintiff's termination was temporally remote from her period of disability. Nevertheless,
26 these facts are relevant and should have been disclosed.

² The doctor released plaintiff to work without restrictions based on plaintiff's representation that
overhead reaching and lifting more than 30-40 pounds were not part of her job description. Dkt. # 24 at
¶¶ 9 and 11.

1 to her disability or otherwise followed the proper procedures to have those absences excused.

2 In May 2013, plaintiff was working on a team led by Kayla Anttila. Dkt. # 23 at ¶ 15.
3 Plaintiff was assigned to work on a Norwegian Air airplane in Stall 120 performing a task called
4 “rain in the plane.” That particular task required overhead work, and plaintiff opted to go to a
5 different stall where the other half of Anttila’s team was working. Dkt. # 22 at 154 and 152.
6 Plaintiff asked the lead in that stall for an assignment, which she did for about two minutes until
7 Anttila found her. Plaintiff told Anttila that “rain in the plane” aggravated her back, but Anttila
8 sent her back to work in Stall 120. Dkt. # 22 at 15, 19-20. Boeing conducted an investigation of
9 the matter. Plaintiff denied being out of her assigned work area, but other employees confirmed
10 seeing her in the flight line and otherwise outside of Stall 120. A CAM was issued on July 9,
11 2013, for being “out of your work area without notifying Management during your regular
12 scheduled work hours for an excessive amount of time.” Dkt. # 17-1 at 80.

13 In June 2013, plaintiff received a CAM for failing to accurately report her hours worked.
14 Dkt. # 17-1 at 78. Plaintiff acknowledges that Boeing’s time records were inaccurate in that
15 there is no indication that she clocked out on certain days, but contends that the gun used to scan
16 employee ID badges was defective. Boeing investigated this claim, found the gun was
17 functioning properly, and issued a CAM. Dkt. # 17-1 at 27-29.

18 Plaintiff applied to take intermittent leave under the Family Medical Leave Act. Boeing
19 granted that request in July 2013. Dkt. # 23 at ¶ 19.

20 At some point during the summer of 2013, plaintiff and other employees were watching
21 the delivery of an airplane from the top of an aerostand. A safety focal walking by asked plaintiff
22 to get down: one side of the aerostand had no fall protection (when in use, it is pushed up against
23 the airplane). Plaintiff came down, but then climbed halfway back up the stand. The safety focal
24 again asked her to come down and requested her badge number. Plaintiff did not hear him and
25 walked away. He found her in another stall, where he obtained her badge number and reported
26

1 the incident. Dkt. # 17-1 at 44-48. Plaintiff received a CAM on July 24, 2013, for failure “to
2 follow “Fall Protection Safety guidelines.” Dkt. # 17-1 at 82. The safety focal was unaware that
3 plaintiff had taken medical leave or made a worker’s compensation claim.

4 Plaintiff now had multiple active CAMs on file. On July 24, 2013, Boeing issued a
5 MACA CAM, suspended plaintiff for one day, and notified her that “[a]ny subsequent violation
6 of any of the company’s expectations will result in a review for discharge.” Dkt. # 17-1 at 84.

7 Plaintiff missed seven days of work between July 24, 2013, and September 17, 2013.
8 Plaintiff did not contact DMR to let them know that any of these absences were related to her
9 occupational injury, as is required by Boeing policy. On October 3, 2013, plaintiff’s human
10 resources generalist contacted DMR in an attempt to confirm that plaintiff knew that she was
11 supposed to notify DMR of workplace injury-related absences. Dkt. # 22 at 52. HR was
12 contemplating further corrective action and, given the outstanding MACA CAM, acknowledged
13 that “this particular situation may lead to potential termination” Id. On that same date,
14 plaintiff requested a medical leave of absence until January 13, 2014, to deal with her
15 depression. That leave was granted. In response to HR’s inquiry, DMR provided a list of dates
16 from February 2011 to May 2013 on which plaintiff had called the DMR hotline. Dkt. # 22 at
17 51. HR determined that at least one of the absences in the summer of 2013 was unexcused
18 because plaintiff did not appropriately report the absence to DMR. Dkt. # 18 at ¶ 11. A final
19 CAM was issued on the day plaintiff returned from leave, and her employment with Boeing was
20 terminated.

21 DISCUSSION

22 A. Failure to Accommodate

23 The WLAD makes it unlawful for an employer to discharge a person from employment
24 because of her sensory, mental, or physical disability. RCW 49.60.180. One way in which an
25 employer violates this mandate is if it fails to take steps that are “reasonably necessary to
26

1 accommodate an employee's condition" so as to allow the employee to continue working. Riehl
2 v. Foodmaker, Inc., 152 Wash.2d 138, 145 (2004) (quoting Doe v. Boeing Co., 121 Wash.2d 8,
3 17 (1993)). "An employee qualifies for reasonable accommodation if he or she has an
4 impairment that substantially limits his or her ability to perform the job, or the employer has
5 notice of the impairment and medical documentation establishes 'a reasonable likelihood that
6 engaging in job functions without an accommodation would aggravate the impairment to the
7 extent that it would create a substantially limiting effect.'" Johnson v. Chevron U.S.A., Inc., 159
8 Wn. App. 18, 28 (2010) (quoting RCW 49.60.040(7)(d)). Based on the evidence in the record,
9 plaintiff cannot show that she was deprived of an accommodation to which she was entitled.

10 When plaintiff's physical or mental impairments interfered with her ability to work,
11 Boeing granted leave and/or provided a light duty assignment to accommodate her. Plaintiff
12 argues that Boeing failed to provide reasonable accommodations when it returned her to her
13 regular position in March 2013 and when Anttila refused to reassign her in May 2013. Each
14 incident is discussed below.

15 As of March 7, 2013, plaintiff was released to work without restriction to perform any
16 and all of the tasks that fell within her job description. Plaintiff maintains that, in returning her to
17 her regular position, Boeing violated its duty to engage in the interactive process designed to
18 find a workable accommodation for plaintiff's impairments. This argument is wholly
19 unsupported, if not contradicted, by the record evidence. As plaintiff's light duty assignment was
20 set to expire, plaintiff and her DMR communicated via email regarding her limitations and
21 preferences. Although plaintiff wanted to return to her regular position, the DMR told her that
22 the restrictions she had on file would preclude her from performing that job according to her Job
23 Analysis and discussions with her manager. Dkt. # 23 at 7. If plaintiff were still limited as stated
24 in the file, Boeing would accommodate her by providing a light duty assignment. Plaintiff
25 promptly produced a doctor's note releasing her to full duty employment with no restrictions.
26

1 The parties interacted, the medical record showed that no accommodations were necessary, and
2 plaintiff obtained the result she desired: return to her regular job duties.

3 Thus, as of March 2013, the medical documentation regarding plaintiff's back injury
4 showed that she was unimpaired and that there were no substantial limits on her ability to
5 perform her job. Plaintiff's May 2013 complaint to Anttila that performing "rain in the plane"
6 tasks aggravated her back did not trigger the duty to accommodate under RCW 49.60.040(7)(d).
7 Even if one were to assume that a complaint of a risk of injury put the employer on notice of a
8 qualifying impairment, thereby satisfying the first part of RCW 49.60.040(7)(d)(ii), the medical
9 documentation cleared plaintiff to perform her normal job tasks. Plaintiff knew since at least
10 March 2013 that overhead work was part of her job. As far as Boeing was concerned, there was
11 no medical documentation establishing a reasonable likelihood that performing normal job
12 functions without an accommodation would aggravate a pre-existing impairment or create a
13 substantial limiting effect. Under Washington law as applied to the facts of this case, plaintiff
14 was not entitled to an accommodation.³

15 At oral argument, counsel argued that plaintiff suffers from depression and/or anxiety and
16 that Boeing failed to engage in an interactive process to determine whether her various violations
17 of Boeing policy were attributable to those conditions. Absent some indication that
18 accommodation is necessary, however, the duty to engage in the interactive process does not
19 arise. Whenever plaintiff requested a leave of absence to deal with her mental health issues, the
20 requests were granted. As far as the record shows, plaintiff returned from those leaves with no
21 restrictions and made no requests for accommodation other than additional leave. Boeing was

22
23 ³ To the extent plaintiff argues that Boeing provided an accommodation in May 2013 and then
24 revoked it, the argument is creative but not factually supported. Plaintiff failed to appear for (or
25 abandoned) her work assignment in Stall 120. There is no indication that anyone knew that she had a
26 medical objection to the "rain in the plane" task at the time she found Brian Lind and asked for a
different assignment. The fact that a task was found for her in no way suggests that she was granted an
accommodation for a medical need or physical limitation that was undisclosed.

unaware that plaintiff's anxiety or depression substantially limited her ability to perform her job duties and had no medical documentation suggesting that engaging in her job functions without an accommodation would aggravate her depression or anxiety. Having failed to show either a need or request for on-going mental health accommodation, this aspect of plaintiff's claim fails.

B. Disparate Treatment

An employer can violate the WLAD by discharging a person from employment because of a disability. RCW 49.60.180(2). To survive a motion for summary judgment, plaintiff "only needs to show that a reasonable jury could find that the plaintiff's protected trait was a substantial factor motivating the employer's adverse action." Scrivener v. Clark College, 181 Wn.2d 439, 445 (2104). Plaintiff may raise the necessary inference that her disability motivated her termination "by either offering direct evidence of an employer's discriminatory intent, or by satisfying the McDonnell Douglas [Corp. v. Green], 411 U.S. 792, 802 (1973)], burden-shifting test" Alonso v. Qwest Commc'ns Co., LLC, 178 Wn. App. 734, 743-44 (2013). Plaintiff has opted to proceed through direct evidence in this case. Dkt. # 21 at 19. She must, therefore, provide evidence which, if believed, could allow a reasonable jury to find that her disability was a substantial or significant motivating factor in the decision to terminate her employment without the need to draw inferences or make presumptions. Kastanis v. Educ. Employees Credit U., 122 Wn.2d 483, 491 (1993); Kiser v. Clark College, 143 Wn. App. 1044 (2008).

Plaintiff's theory of the case is that Boeing discharged her because of her absences and that her absences were caused by her back injury and/or depression. Plaintiff relies on Alexander v. Boeing Co., 2014 WL 3734291 (W.D. Wash. July 28, 2014), for the proposition that conduct resulting from a disability, such as absences for medical appointments, treatment, and recovery, is part of the disability and does not provide a separate and distinct basis for an adverse employment action. Id. at *11 (quoting Riehl v. Foodmaker, Inc., 152 Wn.2d 138, 152 (2004)). In Alexander, plaintiff suffered from migraines, and her supervisor and human resources were

1 aware that most of her absences were related to this condition. A prior accommodation had
2 allowed her to work from home and to work part days when a migraine struck, but when the
3 accommodation was removed, her absences increased. The absences were considered a negative
4 factor in her performance review, resulted in a CAM and five-day suspension for unexcused
5 absences, and ultimately led to her termination for job abandonment despite a pending request
6 for FMLA-protected leave. The court found that Boeing may have violated its duty to
7 accommodate plaintiff's disability: in that context, a reasonable jury could find that Boeing's
8 consideration of disability-related absences constituted disability discrimination.

9 In this case, the evidence shows that Boeing repeatedly granted medical leave and other
10 reasonable accommodations for plaintiff's workplace injury and depression whenever they were
11 requested. Any absences that plaintiff took the trouble to tie to her mental or physical disabilities
12 were excused, and there is no indication that any of them resulted in an adverse employment
13 action. Other absences, however, were unexcused, either because plaintiff provided no reason for
14 the absence or because she failed to follow company policy to tie the absence to her disabilities.
15 Boeing need not presume that every absence "results from the disability." An employee may be
16 absent because she has the flu, because she has a doctor's appointment unrelated to her
17 disability, or because she wants a mental health day – if such absences are not excused under the
18 governing leave programs, they can properly be considered by the employer when making
19 employment decisions. It is only when the employee provides the notifications and
20 documentation required by the employer to establish the link between her disability and a
21 particular absence that the absence must not be considered as a negative factor.

22 Plaintiff did not follow Boeing's policies and procedures for excusing the thirty absences
23 that triggered corrective action,⁴ and she has not provided any evidence that the company's
24

25 ⁴ Plaintiff did challenge the accuracy of four of the absences listed on the January 2013 CAM,
26 but made only the barest effort to provide documentation linking those absences to her disability weeks

procedures were too byzantine or difficult for her to follow – in fact, she had successfully utilized the notification systems on numerous occasions.⁵ Plaintiff was disciplined for unexcused absences (*i.e.*, absences for which she had failed to establish a link to her workplace injury or disability), being out of her work area, failing to report her hours accurately, violating safety instructions, and having multiple active CAMs. No reasonable jury could find, based on the evidence in the record, that any of these actions were caused by, related to, or resulted from plaintiff’s disability. Plaintiff has failed to raise a genuine issue of fact regarding defendant’s motivation.⁶

C. Retaliation

Plaintiff also asserts that her termination was retaliatory. The WLAD makes it an unfair practice “for any employer . . . to discharge, expel, or otherwise discriminate against any person because he or she has opposed any practices forbidden in this chapter” RCW 49.60.210(1). To prove her claim of retaliation, plaintiff must show that (a) she was engaged in statutorily protected activity, (b) there was an adverse employment action, and (c) retaliation was a

after the CAM had issued. Dkt. # 22 at 44.

⁵ Counsel makes the circular and unsupported argument that “[r]equiring a disabled employee with mental health limitations to make multiple calls to report an already documented and granted leave, proved to be discriminatory in this case.” Dkt. # 21 at 22. Plaintiff had, in the past, complied with Boeing’s procedures and does not state in her declaration that they were too much for her during the relevant time period. An employee’s failure to comply with a procedure does not ipso facto prove that the procedure is unreasonable.

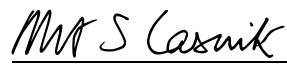
⁶ If plaintiff were to proceed under the burden-shifting analysis set forth in McDonnell Douglas, her claim would also fail. A prima facie case of disparate treatment is not established simply because plaintiff is a member of a protected group and suffered an adverse employment action. Rather, the presumption of discriminatory intent arises only if plaintiff provides evidence that she was treated less favorably than a similarly-situated nondisabled employee. Plaintiff offers no comparator evidence in this case. She makes no attempt to show that a similarly-situated nonprotected employee was treated more favorably with regards to any of the CAMs she received or in the circumstances leading to her discharge.

1 substantial factor motivating the adverse action. Kahn v. Salerno, 90 Wn. App. 110, 128-29
2 (1998). Once a prima facie case of retaliation is presented, the burden shifts to defendant to
3 articulate a legitimate, non-retaliatory reason for the adverse employment action. Renz v.
4 Spokane Eye Clinic, P.S., 114 Wn. App. 611, 618 (2002). Plaintiff bears the ultimate burden of
5 persuasion, however, and must raise an inference of retaliation to withstand a motion for
6 summary judgment.

7 Plaintiff cannot make a prima facie showing of retaliation. There is no evidence from
8 which a reasonable jury could conclude that plaintiff's protected leave – *i.e.*, the absences for
9 which she had established a link to her workplace injury or depression – or her period of light
10 duty assignment caused or were in any way related to her termination. Although plaintiff argues
11 that she did not deserve most of the CAMs she received, none of them was based on protected
12 activity. The only evidence of a causal link is that she was terminated after she took medical
13 leave in 2012 and requested a light duty assignment through March 2013. More than six months
14 elapsed between plaintiff's return to regular duty and HR's termination review, however. No
15 inference of discrimination arises in these circumstances. Even if the timing were more favorable
16 to plaintiff and gave rise to an inference of causation, plaintiff's employment records – including
17 multiple policy violations that triggered every step of Boeing's progressive discipline process –
18 establish a legitimate, non-retaliatory reason for her termination. Thus, plaintiff has failed to
19 offer any evidence from which a reasonable jury could infer that her protected activity was a
20 substantial factor motivating the decision to terminate her employment.

21
22 For all of the foregoing reasons, defendant's motion for summary judgment is
23 GRANTED. The Clerk of Court is directed to enter judgment against plaintiff and in favor of
24 defendant.

1 Dated this 27th day of October, 2016.

2 

3 Robert S. Lasnik

4 United States District Judge